

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a respiratory condition causally related to the accepted May 9, 2019 employment incident.

FACTUAL HISTORY

On June 6, 2019 appellant, then a 54-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on May 9, 2019 she had an adverse reaction due to exposure to an unknown chemical pesticide/insecticide which was sprayed near her clinical work area while in the performance of duty. Her supervisor, on the reverse side of the claim form, indicated that appellant was injured in the performance of duty. Appellant stopped work on May 9, 2019 and returned on May 18, 2019.

In a development letter dated June 12, 2019, OWCP notified appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

In response, OWCP received a May 18, 2019 narrative statement wherein appellant related that on May 9, 2019 she walked into the hallway from her office and noticed a man carrying a container with a hose, which appeared to be a container for insect spray. Appellant told the man that she was allergic to chemicals and asked that he not spray in her workspace. The man responded that the spray was synthetic. Shortly thereafter, appellant saw the man return to the clinical work area and sprayed coworkers' office spaces across the hall from hers. She related that she developed headaches, nausea, vomiting, fatigue, upper respiratory signs and symptoms, scratchy throat, and laryngitis. Appellant further noted that she had previously been exposed to a chemical, which might have been WD-40 at the employing establishment.

In a report dated May 15, 2019, Dr. Clayton Pullin, Board-certified in family practice, related that appellant was seen for an upper respiratory infection and laryngitis, which had been present for one week.

In reports dated June 13 and 14, 2019, Dr. Jeffery Wasetis, a family medicine and general medicine specialist, noted appellant's history of chemical exposure and complaints of nausea, vomiting, diarrhea, and headache. In a narrative report dated June 14, 2019, he assessed that appellant had sustained chemical exposure at work, but that he suspected that her symptoms of nausea, vomiting, diarrhea, and headache were not work related.

In a report dated June 17, 2019, Dr. James Bugg, III, a family medicine specialist, diagnosed chemical exposure at work with the extent of exposure unknown at that time. In a narrative report of even date, he related that appellant was seen for exposure to Alpine pesticide at her workplace. Appellant was taken off work due to her symptoms. Dr. Bugg diagnosed workplace chemical exposure with the extent of exposure unknown. Examination findings were detailed. In a duty status (Form CA-17) of even date, Dr. Bugg noted an injury date of May 9, 2019 when appellant was exposed to sprayed chemical. He diagnosed exposure to hazardous

chemicals with symptoms possibly related to pesticide exposure. Dr. Bugg released appellant to return to work on July 9, 2019 with restrictions of no exposure to the chemical Alpine.

Dr. Wasetis, in a report dated June 19, 2019, noted that appellant was seen for a chief complaint of chemical exposure with nausea, vomiting and diarrhea in addition to upper respiratory symptoms. He provided an assessment of work-related chemical exposure and possibly work-related nausea, headache, diarrhea, and vomiting. Dr. Wasetis detailed appellant's history of injury and provided examination findings. Appellant related developing a cough after inhaling the pesticide sprayed in her office on May 9, 2019. Dr. Wasetis reported that appellant continued to have nausea. Appellant related that on June 13, 2019 she again developed nausea and diarrhea after being re-exposed to the chemical that day. Dr. Wasetis suggested a correlation between appellant's symptoms and chemical exposure based on the recurrence of her symptoms following re-exposure to the chemical. He recommended removal from the environment. As to causation, Dr. Wasetis opined that it appeared that appellant was sensitive to something in her workplace, which she strongly suggested was pesticide exposure.

In a report dated July 3, 2019, Dr. Bugg reiterated findings from his prior reports. He again diagnosed chemical exposure with symptoms possibly due to that exposure. Dr. Bugg recommended looking at non-exposure possibilities for appellant's symptoms in light of the persistence of her symptoms and the atypical association of her continued symptoms with the actual application of the pesticide.

By decision dated July 22, 2019, OWCP denied appellant's claim as it found she failed to establish a causal relationship between a diagnosed medical condition and the accepted May 9, 2019 employment incident.

On August 2, 2019 appellant requested reconsideration and submitted additional evidence.

In notes dated July 31, 2019, Dr. Bugg related that appellant had informed him that her claim was denied based upon his opinion that her condition was not work related. He indicated that he reviewed her record and he thereafter explained that while he had related that her symptoms after her return to work did not appear to be caused by the remote spraying incident, her initial symptoms were causally related to insecticide exposure as described by appellant. Dr. Bugg opined that as appellant's symptoms developed at the time of spraying, it was clear that her symptoms were attributable to her initial exposure.

In encounter notes dated August 14 and September 18, 2019, Dr. Bugg reported appellant was doing well as her chemical exposure had improved.

By decision dated November 26, 2019, OWCP denied modification.

On October 13, 2020 appellant, through counsel, requested reconsideration. She submitted a September 29, 2020 report from Dr. John W. Ellis, Board-certified in family practice and environmental medicine.

In the September 29, 2020 report, Dr. Ellis related that appellant was exposed to spraying of chemicals, which contained Dinotefuran. He noted that the spray more likely than not had an oil base for which the respiratory system is sensitive. Dr. Ellis concluded that appellant had

experienced a physiological response to chemicals at the employing establishment and must avoid any further environmental exposures.

By decision dated November 16, 2020, OWCP denied modification.

On November 25, 2020 appellant, through counsel, requested reconsideration.

By decision dated December 14, 2020, OWCP denied appellant's request for reconsideration.

On April 27, 2021 appellant, through counsel, requested reconsideration and submitted an April 6, 2021 report from Dr. Ellis.

In an April 6, 2021 narrative report, Dr. Ellis noted that he had examined appellant in his office that day. He reviewed the history of her injury when she was exposed to a chemical pesticide spray at work on May 9, 2019. Dr. Ellis diagnosed respiratory tract sensitization from environmental chemicals at work and chronic post-traumatic stress disorder (PTSD) due to her work injury. He noted that appellant was exposed to a chemical spray containing Dinotefuran, which was more likely than not an oil-based spray. Dr. Ellis explained that the respiratory system was extremely sensitive to oils and petrochemicals and that inhaling just a bit of petrochemicals was harmful and sensitized the lungs. He noted that appellant immediately developed eye and nose irritation and slight chest tenderness following exposure to the spraying of chemicals on May 9, 2019. Appellant also reported having headache, difficulty thinking, nausea, and vomiting that evening. Dr. Ellis further opined that appellant was temporarily totally disabled during the one-month period appellant's treating physician placed her off work due to the chemical exposure.

By decision dated June 4, 2021, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

³ *Id.*

⁴ *A.B.*, Docket No. 20-1017 (issued June 11, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *A.B., id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *B.C.*, Docket No. 20-1501 (issued July 27, 2021); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

In support of her claim, appellant submitted multiple medical reports in which her treating physicians noted her symptoms following exposure to pesticide spray on May 9, 2019.

In a July 31, 2019 report, Dr. Bugg related that appellant's initial symptoms were causally related to insecticide exposure as she described. He opined that it has been clear throughout the time of the injury that her symptoms were attributable to her initial exposure.

Also submitted were reports from Dr. Ellis dated September 29, 2020 and April 6, 2021 wherein he diagnosed respiratory tract sensitization of environmental chemicals due to exposure to pesticide spray on May 9, 2019.

In an April 6, 2021 report, Dr. Ellis provided findings on examination and diagnosed respiratory tract sensitization. He attributed the diagnosed conditions to her exposure to pesticide spray on May 9, 2019. Dr. Ellis noted that appellant was exposed to a chemical spray containing Dinotefuran, which was more likely than not an oil-based spray. He explained that the respiratory system was extremely sensitive to oils and petrochemicals and that inhaling just a bit of petrochemicals was harmful and sensitized the lungs.

The Board finds that the reports of Dr. Bugg and Dr. Ellis provide an affirmative opinion on causal relationship. Further, these opinions are based upon a complete factual history and medical background.¹¹ While Dr. Bugg and Dr. Ellis' report are insufficiently rationalized to meet

⁷ *Id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *A.B.*, *supra* note 4; *K.L.*, Docket No. 18-1029 (issued January 9, 2019). See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁹ *A.B.*, *id.*; *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *E.P.*, Docket No. 20-0898 (issued February 17, 2021); *S.C.*, Docket No. 19-0920 (issued September 25, 2019).

appellant's burden of proof to establish her claim, taken together they raise an uncontroverted inference between her respiratory tract sensitization and the accepted employment incident and, therefore, is sufficient to require OWCP to further develop the medical evidence and the case record.¹²

The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.¹³ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹⁴

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand OWCP shall prepare a statement of accepted facts (SOAF) and refer it, appellant, and the medical record to a specialist in the appropriate field of medicine for a second opinion on whether the accepted May 9, 2019 employment incident resulted in the diagnosed condition causally related to the accepted employment incident. If the physician opines that the diagnosed condition is not causally related, he or she must explain with rationale how or why the causation opinion differs from that of Dr. Bugg and Dr. Ellis. Following this and any other further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹² *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018).

¹³ *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

¹⁴ 20 C.F.R. § 10.121.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 7, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board